REMARKS

Applicants respectfully request further examination and reconsideration in view of the amendments above and the arguments set forth fully below. Claims 1, 2, 4-14, 16-25 and 27-29 were previously pending in this Application. Within the Office Action, Claims 1, 2, 4-14, 16-25 and 27-29 have been rejected. By the above amendment, Claims 12 and 23 have been amended. Accordingly, Claims 1, 2, 4-14, 16-25 and 27-29 are now pending in the application.

Rejections Under 35 U.S.C. § 101

Within the Office Action, Claims 12 and 23-25 have been rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. The Applicants respectfully disagree. However, in order to further the prosecution of the present application, Claims 12 and 23 have been amended by the above amendment. Specifically, the independent Claim 12 has been amended to specify that the current display window is displayed on a display and the audio/visual content is prefetched from a memory device. The independent Claim 23 has also been amended to specify that the prefetch buffer is for temporarily storing a prefetched audio/visual content item within a memory device and the current display window is displayed on a display. Accordingly, the Claims 12 and 23-25 are directed to statutory subject matter.

Rejections Under 35 U.S.C. § 103

Within the Office Action, Claims 1, 2, 4-14, 16-25 and 27-29 have been rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent Application Publication No. 2002/0013852 to Janik (hereinafter "Janik") in view of U.S. Patent Application Publication No. 20010021994 to Nash (hereinafter "Nash"). The Applicants respectfully disagree.

Janik teaches a system for providing content, management, and interactivity for thin client devices. Janik teaches a capability for determining and aggregating the content objects presented to a specific user on content selection web pages which is derived from content preference selections provided by the user. [Janik, ¶ 0082] Janik further teaches time-based automation of the accessing, caching and streaming of content from the Internet at times prescribed by the user or at times derived by direction given by the user through the GUI content editors. [Janik, ¶ 0105, 0167, 0184, 0192] As acknowledged in the Office Action, Janik does not teach identifying a use pattern corresponding to a user. Further, Janik does not teach detecting a current display window according to the presently claimed invention. Janik merely teaches presenting content as content objects on a content selection web page. [Janik, 0074-0076]

In contrast, the methods and apparatus of the presently claimed invention "detects the content of the current display window." The current display window could display different pieces of music content from any one of several different genres. The current display window could represent content presently viewed or content that is selected by the user. [Current Specification, page 16, lines 17-23, page 19, lines 6-9]

Janik also does not teach prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern for at least the same reason as explained above, Janik does not teach detecting the content of the current display window. Further, the "prefetching" as taught in Janik is merely time-base automation of providing content to a user and lacks the sophistication of the currently claimed invention that prefetches at least one audio/visual content in response to the current display window, the preference and the use pattern. Also, Janik does not teach detecting an activity.

Nash teaches a television system transmission and receiving apparatus including a data decoder and a processor. [Nash, 0005] Nash teaches storing data to determine advertisements which may be of interest to a viewer based on information entered by the viewer or information derived from monitoring the viewing habits of the viewer, such as the user selecting a certain advertisement for viewing. [Nash, 0048] However, neither Janik, Nash nor their combination teach detecting a current display window according to the present invention. Further, neither Janik, Nash nor their combination teach prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern.

In contrast to the teachings of Janik, the methods and apparatus described within the present application, organize audio/visual content and prefetch selected audio/visual content configured to be displayed to a user. The current display window can display different pieces of music content from any one of several different genres. The current display window could represent content presently viewed or content that is selected by the user. [Current Specification, page 16, lines 17-23, page 19, lines 6-9] A presentation layer takes into account the preferences and use patterns of a user. [Present Specification, page 8, lines 17-20] In one embodiment, audio/visual content is pre-sorted according to the use patterns of the user. [Present Specification, page 8, lines 20-21] In another embodiment, the audio/visual content is *pre-fetched* according to the use patterns of the user. [Present Specification, page 8, lines 21-22] As described above, Janik does not teach identifying a use pattern corresponding to a user. Further, neither Janik, Nash, nor their combination teach detecting a current display window according to the present invention. Also, neither Janik, Nash, nor their combination teach prefetching at least one

audio/visual content in response to the current display window, the preference and the use pattern. In addition, Janik does not teach detecting an activity.

There is no motivation to warrant the combination of Janik and Nash. There is no hint, teaching or suggestion in either of Janik and Nash to warrant their combination.

This is a classic case of impermissibly using hindsight to make a rejection based on obviousness. The Court of Appeals for the Federal Circuit has stated that "it is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." In Re Fritch, 972 F.2d, 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). As discussed above, neither Janik, Nash nor their combination teach detecting a current display window according to the presently claimed invention. Further, neither Janik, Nash nor their combination teach prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern, as claimed. Within the Office Action, it is recognized that Janik does not teach identifying a user pattern corresponding to a user or prefetching content in response to the user pattern. Within the Office Action, it is stated that

> it would have been obvious to one of ordinary skill in the art to have included the use pattern of Nash with the teaching of Janik. [Office Action, page 4]

It is only with the benefit of the present claims, as a "template" that there is any motivation to combine Janik with Nash. No such motivation can be found in the teachings of either of the references. To conclude that the combination of Janik and Nash is obvious, based on the teachings of these references, is to use hindsight based on the teachings of the present invention and to read much more into Janik and Nash than their actual teachings. This is simply not permissible based on the directive from the Court of Appeals for the Federal Circuit.

It is well settled that to establish a *prima facie* case of obviousness, three basic criteria must be met:
1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
2) there must be a reasonable expectation of success; and
3) the prior art reference, or references, must teach or suggest all the claim limitations. MPEP § 2143.

The burden of establishing a *prima facie* case of obviousness based on the teachings of Janik and Nash has not been met within the Office Action.

There is no motivation to combine the teachings of Janik and Nash. Janik relates to providing content, management, and interactivity for thin client devices. Nash teaches determining television advertisements to present to a viewer. There is no hint, teaching or suggestion in Janik and Nash to motivate one skilled in the art to combine their teachings. It is only with the benefit of the presently claimed invention as a "template" that one would consider combining Janik and Nash.

Even if considered proper, the combination of Janik and Nash does not teach detecting a current display window according to the presently claimed invention. Further, neither Janik, Nash nor their combination teach prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern.

Furthermore, non-analogous art is being cited to form the basis of the rejection over Janik in view of Nash. The Applicant's presently claimed invention relates to organizing and prefetching audio/visual content in systems according to a current display window, preference and use pattern. On the other hand, Nash relates to determining television advertisements of interest to a viewer base on information entered by the viewer or information derived from monitoring the viewing habits of the viewer. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Determining television advertisements to present to a viewer is clearly not in the same field as organizing and prefetching audio/visual content in systems according to a current display window, preference and use pattern. Furthermore, determining television advertisements to present to a viewer is not reasonably pertinent to the problem of finding and accessing specific audio/visual content and making available to the user while minimizing lag time. Without using the benefit of hindsight, it would not have been obvious to a person having ordinary skill in the relevant art to look to television apparatus and advertising industry to find ideas to improve upon then known methods of organizing and prefetching audio/visual content in systems according to a current display window, preference and use pattern.

The independent Claim 1 is directed to a method comprising identifying a preference and a use pattern corresponding to a user, detecting a current display window, prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern and setting a prefetch parameter for a frequency of prefetching in response to the preference. As described above, Janik does not teach identifying a use pattern corresponding to a user. Further, neither Janik, Nash, nor their combination teach detecting a current display window. Neither

Janik, Nash, nor their combination teach prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern. Also, Janik does not teach detecting an activity. For at least these reasons, the independent Claim 1 is allowable over the teachings of Janik, Nash and their combination.

Claims 2 and 4-11 are all dependent on the independent Claim 1. As described above, the independent Claim 1 is allowable over the teachings of Janik, Nash and their combination. Accordingly, Claims 2 and 4-11 are all also allowable as being dependent on an allowable base claim.

The independent Claim 12 is directed to an electronic device-implemented system comprising means for identifying a preference and a use pattern, means for organizing audio/visual content using a parameter, means for detecting a current display window being displayed on a display, means for prefetching at least one audio/visual content from a memory device in response to the current display window, the preference and the use pattern and means for setting a prefetch parameter for a frequency of prefetching in response to the preference. As described above, Janik does not teach means for identifying a preference and a use pattern. Further, neither Janik, Nash, nor their combination teach means for detecting a current display window. Also, neither Janik, Nash, nor their combination teach means for prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern. For at least these reasons, the independent Claim 12 is allowable over the teachings of Janik, Nash and their combination.

The independent Claim 13 is directed to a method comprising detecting an activity, setting a prefetch parameter based on the detected activity, wherein the prefetch parameter includes a frequency of prefetching, detecting a current display window and prefetching a content item based on the prefetch parameter, the current display window and a use pattern. As described above, Janik does not teach detecting an activity. As also described above, neither Janik, Nash, nor their combination teach prefetching a content item based on the prefetch parameter, the current display window and a use pattern. Further, neither Janik, Nash, nor their combination teach detecting a current display window. For at least these reasons, the independent Claim 13 is allowable over the teachings of Janik, Nash and their combination.

Claims 14, 16-22 are all dependent on the independent Claim 13. As described above, the independent Claim 13 is allowable over the teachings of Janik, Nash and their combination. Accordingly, Claims 14, 16-22 are all also allowable as being dependent on an allowable base claim.

The independent Claim 23 is directed to an electronic device-implemented system comprising a media container configured for storing an audio/visual content item, a prefetch buffer configured for temporarily storing a prefetched audio/visual content item within a memory device and a presentation layer configured for transmitting the prefetched audio/visual content item to the prefetch buffer based on a user's preference, a current display window and a use pattern, wherein the presentation layer transmits the prefetched audio/visual content item based on a preset frequency of prefetching and further wherein the current display window is displayed on a display. As described above, neither Janik, Nash, nor their combination teach a presentation layer configured for transmitting the prefetched audio/visual content item to the prefetch buffer based on a user's preference, a current display window and a use pattern. For at least these reasons, the independent Claim 23 is allowable over the teachings of Janik, Nash and their combination.

Claims 24 and 25 are both dependent on the independent Claim 23. As described above, the independent Claim 23 is allowable over the teachings of Janik, Nash and their combination. Accordingly, Claims 24 and 25 are both also allowable as being dependent on an allowable base claim.

The independent Claim 27 is directed to a method. The method of Claim 27 comprises detecting an activity, setting a prefetch parameter based on the detected activity, wherein the prefetch parameter includes a frequency of prefetching, detecting a current display window and prefetching a content item based on the prefetch parameter, the current display window and a use pattern at any time, in response to the detected activity. As described above, neither Janik, Nash, nor their combination teach prefetching a content item based on the prefetch parameter, the current display window and a use pattern at any time, in response to the detected activity. Further, neither Janik, Nash, nor their combination teach detecting a current display window. For at least these reasons, the independent Claim 27 is allowable over the teachings of Janik, Nash and their combination.

Claims 28 and 29 are both dependent on the independent Claim 27. As described above, the independent Claim 27 is allowable over the teachings of Janik, Nash and their combination. Accordingly, Claims 28 and 29 are both also allowable as being dependent on an allowable base claim.

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For the reasons given above, the applicant respectfully submits that the claims are now in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, they are encouraged to call the undersigned at (408) 530-9700 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,
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Dated: _____April 30, 2009_____   By: ___/Jonathan O. Owens/_____

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